

AGENDA DATE: MAY 12, 1999

I/M/O THE RATE UNBUNDLING	)	
FILINGS BY GAS PUBLIC UTILITIES	)	<u>GAS</u>
PURSUANT TO SECTION 10, SUB-	)	
SECTION A, OF THE ELECTRIC	)	ORDER ON
DISCOUNT AND ENERGY COMPETITION	)	MOTIONS TO INTERVENE
ACT OF 1999	)	Docket Nos. GX99030121
		GX99030122, GX99030123
		GX99030124, GX99030125

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

By Order dated March 31, 1999, the Board established procedures for the natural gas rate unbundling filings required to be made on May 1, 1999 as a result of the Electric Discount and Energy Competition Act, P.L. 1999, c.23, By the state's four investor owned natural gas utilities; Elizabethtown Gas Company (Elizabethtown), docket number GX93030122, New Jersey Natural Gas Company (NJNG), docket number GX93030123, Public Service Electric & Gas Company (PSE&G), docket number GX93030124 and South Jersey Gas Company (SJG), docket number GX93030125. This Order memorializes actions taken by the Board of Public Utilities ("Board" or "BPU") at its May 12, 1999 agenda meeting on motions to intervene in the subject proceedings by Reliant Energy Retail, Inc.(Reliant Energy), the New Jersey Business Users (NJBUS), Shell Energy Services Company, LLC. (Shell), the National Energy Marketers Association (NEMA), Utilicorp United Inc. (Utilicorp), Pedricktown Cogeneration Limited Partnership (PCLP), Vineland Cogeneration Limited Partnership (VCLP) and Enron Energy Services, Inc. (EESI).

By Petition dated April 14, 1999, Reliant Energy moved to intervene in each of the subject natural unbundling proceedings and also moved for Admission Pro Hac Vice of Douglas F. John and Joelle K. Ogg. Reliant Energy is a nationwide retail marketer of natural gas and other energy services and is a potential marketer in each of the New Jersey natural gas utility service territories. Reliant Energy states that it already serves gas customers in New Jersey, that it will be directly and specifically affected by the outcome of these proceedings and that its' interests cannot be adequately represented by any other party.

By letter dated April 26, 1999, PSE&G filed in opposition to the Reliant Energy motion to intervene in the PSE&G proceeding. PSE&G states that Reliant Energy fails to indicate how the subject proceedings will specifically affect the movant. By not indicating the specific markets which Reliant Energy plans to serve, PSE&G claims that the Board is unable to determine if other parties may not be able to represent Reliant Energy's interests in these proceedings. No other party has opposed the Reliant Energy motion.

By petition dated April 15, 1999, the National Energy Marketers Association moved to intervene in all four natural gas proceedings. NEMA is a national, non-profit trade association representing producers, generators, transporters and marketers of energy and energy-related services. NEMA states that various members intend to serve the New Jersey markets. NEMA further states that it will be directly and specifically affected by the outcome of these proceedings and that its interests cannot be adequately represented by any other party.

By letters dated April 26, 1999, and April 27, 1999, PSE&G and SJG, respectively, opposed the motion of NEMA to intervene in its proceeding (GX99030124 and GX99030125). Both PSE&G and SJG make similar arguments. They point to the unknown membership of NEMA and the possibility that permitting NEMA to intervene would duplicate the interests of other intervenors, specifically Shell and Utilicorp. Both utilities also cite the lack of in-state representation by NEMA as being in violation of N.J.A.C. 1:1-5.1 and as a further reason for denying the NEMA motion.

Subsequently, by letter dated May 5, 1999, NEMA filed an amended motion to intervene and a motion for Admission Pro Hac Vice of Craig G. Goodman.

By petition dated April 16, 1999, Utilicorp United Inc. moved to intervene in the Public Service Electric & Gas Company and South Jersey Gas Company proceedings, and moved for the Admission Pro Hac Vice of Paul F. Forshay, Esq. and Gregory K. Lawrence, Esq. and David I. Adelman, Esq. and Charles B. Jones, III, Esq., respectively. Utilicorp states that it is an aggregator and supplier of natural gas to customers on the PSE&G and SJG systems. Utilicorp further states that it as an interested party and stakeholder in the unbundling of PSE&G's and SJG's rates and services, it has been an active party in several other unbundling-related matters before the Board. Finally, Utilicorp offers that, where possible, it will work with other parties in the case in the interest of administrative efficiency and economy. No party has filed in opposition to the Utilicorp motion.

By petition dated April 22, 1999, NJBUS moved to intervene in the Elizabethtown Gas Company, New Jersey Natural Gas Company and Public Service Electric & Gas Company proceedings. NJBUS claims to be an ad hoc group of large commercial and industrial customers that consume natural gas in New Jersey. NJBUS states that the ability of its members to continue to purchase natural gas in a competitive market could be substantially affected by the outcome of these proceedings. No party has opposed the NJBUS motions to intervene.

By petition dated April 27, 1999 Shell moved to intervene in all four of the above captioned natural gas unbundling proceedings. Shell further moved for the Admission Pro Hac Vice of Paul F. Forshay, Esq. And Gregory K. Lawrence, Esq. In the Elizabethtown, NJNG and PSE&G proceedings and of David I. Adelman, Esq. and Charles B. Jones, III, Esq., in the SJG proceeding. Shell is a national marketer, aggregator and supplier of natural gas to retail customers. It states that it intends to serve retail customers on the systems of all four natural gas utilities, and that its ability to compete will be substantially and specifically affected by the outcome of these proceedings. Shell has also been an active participant in other proceedings before this Board. No party has opposed the Shell motions to intervene.

By petition dated May 4, 1999, Pedricktown Cogeneration Limited Partnership and Vineland Cogeneration Limited Partnership moved to intervene in the SJG proceeding. Both VCLP and PCLP own gas fired, PURPA qualifying cogeneration facilities. Both take service from SJG under Board approved Service Agreements. Both claim they will be substantially and significantly affected by the outcome of the SJG proceeding and that their interest can not be adequately represented by other interested parties. No party has opposed the VCLP and PCLP motions to intervene.

By petition dated May 7, 1999, Enron Energy Services, Inc. moved to intervene in all four natural gas proceedings. EESI is a subsidiary of Enron Corp. And a provider of natural gas and electric power to the commercial and retail markets in the United States. It focuses on sales to small and mid-sized consumers and is, either currently or potentially, a supplier of natural gas in all four natural gas utility service areas. EESI states that it has a direct and immediate interest in these proceedings which no other party can represent. No party has opposed the Enron motion to intervene.

In considering a motion for intervention pursuant to N.J.A.C. 1:1-16.3, the factors to be considered are the nature and extent of the movant's interest in the outcome of the case, whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the outcome of the case and the prospect of confusion and undue delay.

In the past, in addressing motions to intervene in the electric industry restructuring process, the Board has expressed a desire to receive the widest range of opinions possible and to generally take a liberal approach to requests to intervene and participate. We do not see any reason that our approach to the natural gas unbundling proceedings should be any different. However, our flexibility in this area can not go to the point of overlooking specific requirements of the Administrative Code, namely N.J.A.C.1:1-5.1. We have reviewed the filings of NEMA, PSE&G and SJG and find that with the supplemental NEMA filing of May 5, the NEMA motion does now comply with the procedural requirements of the New Jersey Administrative Code

However, we agree with the argument that the Board and the other parties to these proceeding have a right to know who NEMA would be representing in these proceedings.

Having reviewed the documents and comments on these motions, the Board GRANTS the motions to intervene of Reliant Energy Retail, Inc., Shell Energy Services Company, LLC., Utilicorp United Inc., Pedricktown Cogeneration Limited Partnership, Vineland Cogeneration Limited Partnership and Enron Energy Services, Inc.. The Board FURTHER GRANTS the motions of the New Jersey Business Users and National Energy Marketers Association to intervene conditioned upon receiving, within ten days of this Order a list of the clients that each would be representing in each of the subject proceedings. NJBUS and NEMA should provide a similar list to all other parties.

The Board requests that parties with similar and/or overlapping interests work together to avoid redundancy in discovery, testimony and cross-examination. The board reserves the right to make further procedural rulings as may be necessary to avoid repetition and undue delay.

Furthermore, no objections to the motions for admission pro hac vice have been filed. These motions appear to satisfy the requirements of N.J.A.C. 1:1-5.2 and R. 1:21-2 for the application of admission of any attorney of good standing in another jurisdiction. Therefore, the Board HEREBY GRANTS the motions for admission pro hac vice of Douglas F. John and Joelle K. Ogg, on behalf of Reliant Energy, of Paul F. Forshay, Esq, Gregory K. Lawrence, Esq., David I. Adelman, Esq. and Charles B. Jones, III, Esq on behalf of Utilicorp and Shell and Craig G. Goodman on behalf of NEMA. Pursuant to N.J.A.C.1:1-5.2(a)(4), we set forth the following limitations upon the attorneys' admission established in R 1:21-2(b), requiring the attorneys to:

- (a) Abide by all New Jersey Court Rules, including all disciplinary rules;
- (b) Consent to the appointment of the clerk of the Supreme Court as agent upon whom Service of process may be made for all actions against him/her or his/her firm that May arise out of his/her participation in this matter;
- (c) Notify the Board immediately of any matter affecting his/her standing at the bar of any court, and
- (d) Have all pleadings, briefs and other papers filed with the Board signed by an attorney of record authorized to practice law in this State, who shall be held responsible for them and for the conduct of this cause and of the admitted attorney therein.

In addition, R 1:21-2 provides that no attorney shall be admitted without complying with R. 1:20-1(b) and R. 1:28-2. These require one payment to be sent to the Lawyers' Fund for Client Protection for payment of the sums required by R 1:28-2 for the Lawyers' Fund for Client Protection and R. 1:20-1(b) for the Ethics Financial Committee.

DATED: 5/12/99

BOARD OF PUBLIC UTILITIES  
BY:

SIGNED  
HERBERT H. TATE  
PRESIDENT

SIGNED  
CARMEN J. ARMENTI  
COMMISSIONER

SIGNED  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST: SIGNED  
MARK W. MUSSER  
SECRETARY